

EXHIBIT A

092904AM.txt

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

4

) MDL No.1592

5

IN RE: COLUMBIA UNIVERSITY

) (MLW)

6

PATENT LITIGATION

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VIDEOTAPED DEPOSITION OF

11

BRUCE J. DOLNICK

12

New York, New York

13

wednesday, September 29, 2004

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Reported by:
Frank J. Bas, RPR
JOB NO. 75309

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1 Dolnick

2 BY MR. BARSKY:

3 Q. Dr. Dolnick, I'm going to hand you
4 what has been marked as Exhibit 27 and ask you
10:04:32 5 to take a moment.

6 (Deposition Exhibit 27, for
7 identification, article titled Gene
8 Amplification and Drug Resistance in
9 Cultured Murine Cells.)

10:05:47 10 (Witness reviews document.)

11 Q. Dr. Dolnick, do you recognize
12 Exhibit 27 as a publication from the Schimke lab
13 in 1978?

14 MS. NORTON: Take as long as you
10:05:57 15 need to review it, Dr. Dolnick.

16 (Witness reviews document.)

17 BY MR. BARSKY:

18 Q. I just have a couple of questions
19 about this, Dr. Dolnick. If I can direct your
10:16:19 20 attention to page 1054.

21 MS. NORTON: I would just like to
22 note that it didn't look like the witness
23 had finished reviewing the document yet.

24 Q. By the way, this was a paper that
10:16:45 25 you read in connection with the work that you

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1 Dolnick

2 performed for Amgen in this case, correct?

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17 A. No.

18 Q. Do you recall this work from when

19 you were in the Schimke lab?

10:22:46 20 A. You mean recall the general body of
21 work?

22 Q. Yes, the general body of work that
23 you saw reported in this Exhibit 27.

24 A. I recall most of it, yes.

10:22:55 25 Q. Okay. Let me hand you what has been

55

1 Dolnick

2 marked as Exhibit 26.

3 (Deposition Exhibit 26, for
4 identification, article titled Selective
5 Multiplication of Dihydrofolate Reductase
6 Genes in Methotrexate-resistant Variants of
7 Cultured Murine Cells.)

8 Q. I just have one question about this
9 article.

10:23:22 10 A. Can I look at it?

11 Q. I beg your pardon?

12 A. Can I look at it?

13 Q. Absolutely.

14 (Witness reviews document.)

10:24:01 15 MR. STONE: Counsel, this has been
16 marked as Exhibit 26, is that right?

17 MR. BARSKY: Yes.

18 MR. STONE: Thank you.

19 BY MR. BARSKY:

10:24:15 20 Q. While you're looking at it, I'll

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21 just state for the record that Exhibit 26
22 appears to be an article published in the
23 Journal of Biological Chemistry in 1978. It's
24 entitled Selective Multiplication of
10:24:31 25 Dihydrofolate Reductase Genes in
□

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1 Dolnick
2 Methotrexate-resistant Variants of Cultured
3 Murine Cells.

4 And while you're looking at that,
10:24:44 5 I'll also note that Exhibit 27, which you
6 previously looked at, entitled Gene
7 Amplification and Drug Resistance in Cultured
8 Murine Cells.

9 (Witness reviews document.)

10:25:10 10 BY MR. BARSKY:

11 Q. If it will assist in your review of
12 the article, Dr. Dolnick, I'm not going to be
13 asking about any of the experimental results in
14 this particular paper, I'm going to have some
10:25:22 15 general questions about the article, but that's
16 all.

17 (Witness reviews document.)

18 BY MR. BARSKY:

19 Q. Dr. Dolnick, let me direct your
10:29:00 20 attention in particular to the portion of the
21 discussion section that appears at the bottom of
22 page 1367. It is the last incomplete paragraph
23 on page 1367, that begins with the word
24 "clearly." Do you see that?

10:29:27 25 A. Yes.

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1 Dolnick

2 Q. Okay, that's what I'm going to ask
3 you about. Why don't you take a moment to read
4 through the bottom of that page, and then I have
10:29:34 5 a question for you.

6 A. (Reading) Okay, I've read that
7 paragraph.

8 Q. Thank you. Do you see the question
9 that the authors ask in the second sentence of
10:31:01 10 that paragraph? I'll read it into the record:
11 "Are they chromosomal or extrachromosomal, and
12 do they exist in tandem arrays or at many
13 locations in the genome?" Do you see that?

14 A. Yes, I see that.

10:31:18 15 Q. Do you understand the authors to be
16 positing as an open question whether or not the
17 amplified DHFR genes exist on the chromosome or
18 off the chromosome?

19 A. Yeah, I think this was a reasonable
10:31:32 20 question in 1978.

21 Q. Why was it a reasonable question in
22 1978?

23 A. It was a relatively new phenomenon.

24 Q. Would a person of skill in the art,
10:31:49 25 as you have defined it, in 1980 have understood

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1 Dolnick

2 that as well?

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21 Q. I beg your pardon?

22 A. Where?

23 Q. Well, I believe it begins in that

24 first column on 1368 and continues through --

10:37:47 25 A. Starting with which paragraph?

□

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1 Dolnick

2 Q. Well, it actually starts with the
3 paragraph that you just read, and it continues
4 through the paragraph that begins with the word

10:38:00 5 "Finally," on 1368.

6 A. Okay. Can I read that through?

7 Q. Yes, go ahead. And then the
8 question, so you have it in mind while you're

9 reading it, is just whether or not the authors
10:38:11 10 are positing different mechanisms, different
11 possible mechanisms for the amplification of the
12 DHFR gene.

13 (Witness reviews document.)

14 BY MR. BARSKY:

10:46:30 15 Q. Are you ready for a couple of
16 general questions about that portion of the
17 article?

18 A. I suppose so.

19 Q. The authors of this article from
10:46:38 20 1978 were proposing that gene amplification, at
21 least with the DHFR gene, might occur as a
22 result of a number of different mechanisms.
23 Correct?

24 A. That's right.

10:46:49 25 Q. And a person of skill in the art, as

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1 Dolnick

2 more likely than the other. Do you have that
3 question in mind?

4 A. Yes.

11:38:22 5 Q. Thank you.

6 (Witness reviews document.)

7 Q. So Dr. Dolnick, did the authors of
8 Exhibit 26 write anything that would suggest to
9 a person of skill reading this article in 1978

11:42:33 10 that one of these mechanisms was significantly
11 more likely than any other?

12 A. I haven't finished reading the
13 discussion section.

14 Q. Okay.

11:47:54 15 (Witness reviews document.)

16 BY MR. BARSKY:

17 Q. Based on the review that you've made
18 so far, are you able to say whether or not the
19 authors distinguished the likelihood of any one
11:48:01 20 of these amplification mechanisms?

21 A. Actually, after -- I didn't finish
22 it, but from what I've read so far, it does look
23 like they thought that some mechanisms might be
24 more likely than others.

11:48:12 25 Q. Which ones do you think that the

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1 Dolnick

2 authors suggest might be more likely than

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21 Q. Well, when you read the first two
22 sentences of that, let me know and I'll ask you
23 the question.

24 (Witness reviews document.)

11:54:25 25 Q. A person of skill in 1980 reading

□

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1 Dolnick

2 this portion of Exhibit 26 would have understood
3 the authors to be reporting both stable and
4 unstable amplified DHFR cell lines. Correct?

11:54:40 5 MS. NORTON: Objection, vague with
6 respect to reporting. And he still hasn't
7 had the chance to read the entire article.
8 If you feel you need to read the whole
9 article to answer the question, take your
11:55:09 10 time.

11 (Witness reviews document.)

12 BY MR. BARSKY:

13 Q. By the way, I agree with what your
14 counsel said. If you feel you need to read the
11:55:31 15 entire article, go ahead.

16 MR. BARSKY: But I do want to point
17 out, Ms. Norton, that we are going to need
18 Dr. Dolnick for two days.

19 MS. NORTON: You haven't asked for
11:55:41 20 that. He's scheduled to return. He has a
21 7 o'clock flight back to Buffalo tonight.
22 I have a flight back to San Diego tomorrow
23 morning.

24 (Witness reviews document.)

12:01:29 25 Q. Do you still have the question in
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1 Dolnick
2 mind, Dr. Dolnick?
3 A. I haven't finished reading it yet.
4 Q. I know. But do you have the
12:01:34 5 question in mind?
6 A. Well, I won't really know until I
7 have finished reading.
8 Q. I didn't ask the answer. I just --
9 A. I'm sorry, I didn't understand.
12:01:41 10 Yes, I still have the question in mind.
11 Q. Thank you.
12 (Witness reviews document.)
13 A. So getting back to the question
14 again, can I have it restated just one more
12:03:45 15 time?
16 Q. Sure. The question I wanted to ask
17 you is with reference to the intriguing question
18 that's referenced towards the end of page 1368,
19 do you see that reference?
12:03:57 20 A. Yes.
21 Q. Okay. Would a person of skill at
22 the -- let me withdraw that.
23 Would a person with skill in the art
24 as of the date of the publication of this
12:04:08 25 article have understood that the authors were

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1 Dolnick
2 commenting on a fact that there are stably

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12 I may have leafed through it. But I didn't read
13 it.

14 Q. Okay.

01:48:04 15 This publication appeared in
16 Cytogenetics and Cell Genetics; is that correct?

17 A. That's right.

18 Q. There are two passages I can direct
19 your attention to in an effort to conserve time,
01:48:43 20 if you would like. The first is on page 149.

21 It's the first complete paragraph on page 149,
22 in the right-hand column. The second is the
23 paragraph on the following page. It's the first
24 complete paragraph that appears in the
01:49:06 25 right-hand column.

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1 Dolnick

2 (Witness reviews document.)

3 Q. I'm only going to be asking you
4 about those two passages, so when you're ready
01:50:38 5 let me know. Okay?

6 A. Okay.

7 (Witness reviews document.)

8 A. Okay.

9 Q. This paper was published after
01:57:04 10 the -- Dr. Dolnick, have you now reviewed
11 Exhibit 28?

12 A. Yes.

13 Q. And this is your article from 1981?

14 A. This is Ronald Berenson's article.
01:57:17 15 I'm a coauthor on this article.

16 Q. And if you were a coauthor on this
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12 referring to the -- not to the transformation
13 with the linearized plasmid, but they're
14 referring to the transformation of the in vitro
03:14:35 15 ligated DNA. So if we want to talk about the
16 plasmid, I think we have to find the appropriate
17 paragraphs that specifically refer to that.

18 Q. Okay, do you want to take a look for
19 that?

03:14:50 20 A. Sure. So I'm looking for references
21 with regard to stability; is that correct? Is
22 that what you want me to be looking for?

23 Q. Yes.
24 (Witness reviews document.)

03:16:46 25 A. I'm having a difficult time

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1 Dolnick
2 discriminating where the authors make a
3 distinction between the clones that were
4 transfected with the linearized plasmid versus
03:16:55 5 the plasmid ligated in vitro, in terms of
6 stability of ovalbumin.
7 Q. Earlier you testified with respect
8 to chromosomal integration being a fair
9 inference from the presence of the TK+ gene in
03:17:15 10 the high molecular weight DNA. Is that correct?

11 A. I testified that chromosomal
12 integration of a TK gene -- after transformation
13 with high molecular weight DNA would be
14 expected?

03:17:28 15 Q. Yes.

16 A. Yes.

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3 got that impression from. That's all.

4 A. From reading the paper.

03:30:00 5 Q. Okay. And if you can't point to it
6 quickly, then don't bother. But take a quick
7 look and see if you can find the passage that
8 reports on that.

9 (Witness reviews document.)

03:30:49 10 A. So they're saying three out of the
11 seven clones, if I'm interpreting this correct,
12 contain portions of the ovalbumin gene.

13 MS. NORTON: Take all the time you
14 need to review the reference.

15 THE WITNESS: Okay.

03:31:18 16 (Witness reviews document.)

17 A. The place we should be looking is on
18 page 245.

19 Q. Okay.

03:31:44 20 A. And it states there, in the intact
21 paragraph, it's specifying transformation with
22 the linearized POV12 TK plasmid, and it says that
23 they isolated six transformants. "All six
24 transformants showed a predominant hybridization
03:32:04 25 signal at 12.2 kb, indicating that the entire

□ 185

1 Dolnick

2 12.2 kb of chicken DNA from POV12 - TK was
3 present."

4 Q. And these are data regarding the
03:32:16 5 chimeric plasmid experiment?

6 A. That's correct.

7 Q. And when they say they identified
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17 to just read it and then answer the question?

18 A. It would probably facilitate it.

19 Q. A framework?

03:46:06 20 A. A framework.

21 Q. Certainly. First I'm going to ask
22 you to point to what data were reported, or what

23 discussion was had in this article that you

24 believe would have changed the way a person of

03:46:19 25 skill in the art viewed the viability of reverse

□

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1 Dolnick

2 transcription as an amplification mechanism.

3 Let's start there.

4 A. Okay.

03:46:29 5 Q. Thank you.

6 (Witness reviews document.)

7 A. Okay.

8 Q. Have you now read Exhibit 29?

9 A. I have.

04:14:15 10 Q. Can you identify this, Dr. Dolnick,

11 as the article by Kaufman and others from 1979

12 that you testified about earlier in your

13 testimony?

14 A. Yes. This is the article that I

04:14:39 15 referred to earlier.

16 Q. Before I ask you some specific

17 questions about this article, I want to go back

18 to one issue that we discussed earlier. As of

19 19 -- and I want to construct a hypothetical for

04:14:52 20 you, if I could.

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12 it mischaracterizes the claim as a process
13 claim.

14 A. So you're asking me if it requires
06:47:31 15 some amplification within the chromosome?

16 Q. Yes.

17 A. I don't think that is stated
18 anywhere within the claim.

19 Q. Okay. And so you don't think that
06:47:39 20 it would be a requirement, Claim 19. Is that
21 fair?

22 A. I think it did happen -- I don't
23 think it would be a requirement based upon what
24 I'm reading here.

06:47:49 25 MR. BARSKY: Counsel?

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1 Dolnick

2 MS. NORTON: Are you done with that
3 line of questioning, or will you finish in
4 the next few minutes?

06:47:56 5 MR. BARSKY: No. Should we have our
6 competing statements on the record now?
7 You tell me, and we could let Dr. Dolnick
8 go. You tell me. You have advised me that
9 you're going to terminate the deposition,
06:48:08 10 so if that's what you're going to do, we
11 can -- you can tell your witness to leave,
12 and then we can --

13 MS. NORTON: Can I ask the court
14 reporter to tell me what the total
06:48:16 15 transcript time is at this point?

16 THE VIDEOGRAPHER: On the record,
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17 we've been on for seven hours and two
18 minutes.

19 MS. NORTON: I was right, then.

06:48:27 20 Okay, it's our position that we produced
21 Dr. Dolnick at 9 o'clock this morning, and
22 it is now nearly 7 o'clock p.m., and that
23 you've had seven hours with which to
24 question him, that you spent several hours
06:48:42 25 of your time asking him basically the same
□

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1 Dolnick

2 question over and over about reverse
3 transcription, and that's the way you've
4 made use of your time, and the time is now
06:48:51 5 over. In the schedule that your client
6 sent around proposing a schedule for the
7 expert depositions, you only asked for one
8 day with Dr. Dolnick, and one day is seven
9 hours.

06:49:02 10 MR. BARSKY: And we've already met
11 and conferred on the motion we're filing on
12 this. We understand you're terminating the
13 deposition. I'm not going to brief the
14 issue now. You know what my position is
06:49:13 15 about us not having had a full opportunity
16 to depose Dr. Dolnick. You know we're not
17 done. And so rather than take up anyone's
18 time or transcript pages, we're going to
19 just simply brief the issue in our motion
06:49:28 20 that will be filed very shortly. And so

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21 you are terminating the deposition,
22 correct?

23 MS. NORTON: I think that the
24 deposition has gone its natural course, its
06:49:41 25 full seven hours, and I think it's time for
□

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1 Dolnick

2 Dr. Dolnick to get to go home.

3 MR. BARSKY: Okay. Well, there's a
4 difference between thinking it's time and
06:49:51 5 terminating the deposition. If your
6 position is the deposition's terminated,
7 then just say it.

8 MS. NORTON: Our position is that
9 you've had the full seven hours that you
06:49:59 10 asked for and that you're entitled to with
11 Professor Dolnick.

12 MR. BARSKY: Well, I think we are
13 adjourned, in that case.

14 THE VIDEOGRAPHER: This concludes
06:50:10 15 today's deposition of Bruce Dolnick. We're
16 now off the record at 6:48 p.m., 9/29/04.

17 (Time noted: 6:48 p.m.)
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